

The purpose of this memorandum is to address issues that have arisen regarding the “verification” of reasonable accommodation requests for assistance animals, particularly those assistance animals that provide emotional support or other seemingly untrained assistance to persons with a disability.¹ Residential housing providers report confusion and frustration where the reasonable accommodation requirements in state and federal fair housing laws intersect with requests from persons with disabilities to allow an assistance animal in the dwelling. In order to provide guidance to housing providers requesting parameters for evaluating the sources and types of information provided in support of reasonable accommodation requests, we offer examples of presumed credible verifiers as well as suggestions for inhibiting perceived abuses and implementing best practice recommendations.

I. INTRODUCTION

When the Virginia Fair Housing Law (“VFHL”) and its federal counterpart, the Fair Housing Act (“FHA”), were amended in the late 1980s to include disability as a protected class, legislators created targeted protections for persons with a disability. Specifically, persons with a disability were given the right to seek reasonable accommodations (changes to rules, practices, policies, etc.) and modifications (physical alternations to the premises) to ensure the opportunity to enjoy equal access to housing.

Since that time, and perhaps with greater frequency in recent years, persons with a disability and housing providers have faced questions over making accommodations to policies that restrict pets or assistance animals. While service animals are not a new phenomenon—such as dogs that guide visually impaired persons, alert hearing impaired persons to sounds and

¹ While both laws use the term “handicap,” this memorandum uses the more preferred term “disability” and its variations, which have the same legal meaning. See, 18 VAC 135-50-200; Bragdon v. Abbott, 524 U.S. 624 (1998).

alarms, or perform tasks for mobility impaired individuals—increasingly, there are a growing number of instances in which persons with a disability derive other types of support or assistance from animals.

Today, it is just as common for an animal to provide emotional support, protection, or companionship to a person with a mental impairment. Some animals are naturally sensitive to a person's blood sugar levels and can alert when an individual who has diabetes reaches a dangerous threshold; others will alert when sensing that a person with a disability is about to experience a seizure. Often, the animal in question provides such assistance without any formal training but instead through innate abilities the animal possesses. Such innate assistance, though, particularly when coupled with a person who has “invisible” impairments, reportedly presents challenges for housing providers with pet restriction policies.

Housing providers suggest that some individuals “game the system,” and abuse the legal protections in place for persons with disabilities, by fraudulently claiming an “invisible” impairment and declaring their pet an assistance animal. For instance, housing providers complain that there are an influx of websites and other third-party sources offering assistance animal “certifications” without any firsthand knowledge of whether the animal provides a needed service or support, or even if the individual tied to the request is a person with a disability. More recently, some housing providers point to what appear to be form letters from medical professionals vouching for persons to have such an animal without evidence of effort to verify either disability or the claimed assistance.

Fundamentally, housing providers contend that the VFHL and FHA, in their current form, leave little room to question such verifications—especially when an individual presents an assistance animal “certification” obtained from an online source—without the risk of inviting a

discrimination charge. For the reasons below, we believe this is not the case, as adequate, appropriate protections already exist in both fair housing and health professions laws.

II. BACKGROUND

In the late 1980s, Congress and the General Assembly amended their respective fair housing laws to prohibit discrimination against persons with a disability in residential housing transactions.² To ensure full and equal access to housing, the VFHL and FHA were further amended to provide persons with a disability additional protection in the form of requiring reasonable accommodations “in rules, practices, policies, or services when such accommodations may be necessary to afford such person [an] equal opportunity to use and enjoy a dwelling.”³

A person is considered disabled under the VFHL and FHA when the person: (1) has a physical or mental impairment that substantially limits one or more of their major life activities; (2) has a record of having such an impairment; or (3) is regarded as having such an impairment.⁴ “Mental impairments” include, but are not limited to, “emotional or mental illness . . . autism, epilepsy . . . [and] emotional illness.”⁵ Thus, an accommodation aimed at ameliorating the effects of a mental impairment may be required where it is shown that the accommodation is reasonable and necessary to afford a person with a mental or emotional impairment an equal opportunity to use and enjoy the dwelling.

The mental impairments above are emphasized because such so-called invisible impairments are often at the center of an accommodation request for an assistance animal. Differentiation between assistance animals—a different and broader class of animals that assist

² See, Va. Code § 36-96.3(A)(8)(9); 42 U.S.C. § 3604.

³ See, Va. Code § 36-96.3(B)(ii); 42 U.S.C. § 3604(f)(3)(B).

⁴ See, Va. Code § 36-96.1:1; 42 U.S.C. § 3601. Further, such definitions are consistent with the definition of disabled found in the Americans with Disabilities Act (ADA).

⁵ See, 18 VAC 135-50-200; 24 CFR § 100.201.

people with disabilities—and “service dogs” is a fundamental legal distinction for purposes of fair housing accommodation request.

A. Service Animals and Public Accommodations

The federal Americans with Disabilities Act, as amended (“ADA”),⁶ and its state counterpart, the Virginians with Disabilities Act, as amended (“VDA”),⁷ prohibit discrimination against people with disabilities (physical or mental) in employment, the provision of public services, and in public accommodations. Both laws focus, in part, on ensuring that persons with a disability have equal access to places of public accommodation (e.g., hotels, shopping centers, restaurants, etc.) in all areas otherwise open to the public.

Provisions of the ADA and VDA apply to public accommodations and do not extend to residential housing. Public entities covered by these laws must allow a person with a disability to be accompanied by a service animal, narrowly defined as an animal trained to assist persons with visual, hearing, or mobility impairments.⁸ Under the ADA, “the provision of emotional support, well-being, comfort, or companionship” is not, by itself, sufficient to be classified as a service animal.⁹

When evaluating a reasonable accommodation request, a public accommodation may verify that an animal is required because of a disability (although it cannot inquire about the nature of a person’s impairment) and ask what tasks the service animal has been trained to

⁶ See, 42 U.S.C. § 12101, *et seq.*

⁷ See, Va. Code § 51.5-1 *et seq.*

⁸ See, Va. Code § 51.5-40.1; 28 C.F.R. § 36.104.

⁹ See, 28 C.F.R. § 35.104. The term “service animal” is defined in part as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability[...]. The work or tasks performed by a service animal must be directly related to the individual’s disability...[T]he provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”

perform.¹⁰ During its 2016 legislative session, the Virginia General Assembly amended the VDA to deem it a misdemeanor criminal offense for a person to access a public accommodation by falsely representing an animal as a service dog or hearing dog.¹¹

B. Assistance Animals, Private Homes and Fair Housing

In contrast, the VFHL and FHA focus exclusively on accommodations needed by a person with a disability in order to have full and equal access to their home. These laws take a broader approach and require housing providers to accommodate not only service animals as traditionally understood under the ADA, but assistance animals that offer necessary support to persons with a disability without regard to training or tasks performed.¹² Accommodation of untrained emotional support animals may be required under the FHA if such accommodation is reasonably necessary to allow a person with a disability an equal opportunity to enjoy and use residential housing.¹³

When evaluating a reasonable accommodation request under fair housing law, a housing provider may verify that the requester meets the definition of disabled (although it cannot inquire about the specific nature of a person's impairment) and ask how the claimed assistance animal will allow the person with a disability to use and enjoy the dwelling.

¹⁰ See, 28 C.F.R. § 35.136(f).

¹¹ See, Va. Code § 51.5-44.1

¹² The U.S. Department of Justice and the U.S. Department of Housing and Urban Development jointly administer the FHA under 42 U.S.C. §§ 3614(a) and 3612(a), and maintain that the ADA's definition of the term "service animals" should not inform the FHA's broader definition of assistance animals. See, *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 75 Fed. Reg. 56236 (Sept 15, 2010) and *Pet Ownership for the Elderly and Persons with Disabilities*, 73 Fed. Reg. 63834, (Oct. 27, 2008).

¹³ See, *Janush v. Charities Housing Development Corp.*, 169 F.Supp.2d 1133, 1136 (N.D. Cal. 2000) (denying a motion to dismiss a claim to permit keeping birds and cats as emotional support animals because "plaintiff has adequately plead that she is handicapped, that defendants knew of her handicap, that accommodation of the handicap may be necessary and that defendants refused to make such accommodation..."); *Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc.*, 778 F.Supp.2d 1028, 1036 (D.N.D. 2011) (holding that "the FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability.")

C. Assistance Animal and Accommodations Case Law

The physical and philosophical distinction between public and private spaces underscore why the law requires different approaches to reasonable accommodations in each setting. In publishing its final rule regarding assistance animals in government-funded housing the U.S. Department of Housing and Urban Development (“HUD”), which is the agency charged with enforcing the FHA, recognized that “assistance animals” include “service dogs” but also animals that “alert[] individuals to impending seizures and providing emotional support to persons who have a disability-related need for such support.”¹⁴ During its rule-making process, HUD found “a valid distinction between the functions animals provide to persons with disabilities in the public arena, i.e., performing tasks enabling individuals to use public services and public accommodations, as compared to how an assistance animal might be used in the home.”¹⁵

In particular, HUD reasoned that assistance animals, including emotional support animals, “provide very private functions for persons with mental and emotional disabilities” that alleviate the effects of such disabilities without any specialized training.¹⁶ In essence, the federal rule-making process concluded that there is a notable difference in the type of accommodation one may need in order to access public venues (e.g., restaurants, shopping centers, etc.) than in the type of accommodation a person with a disability may need to have full access to and enjoyment of their home.

While this issue has not been addressed under the VFHL by Virginia courts, federal courts have found HUD’s reasoning persuasive in evaluating reasonable accommodation issues

¹⁴ See, 73 Fed. Reg. 63834 (Oct. 27, 2008).

¹⁵ *Id.*, at 63836.

¹⁶ *Id.*

under the FHA for private residential housing as well.¹⁷ For instance, in Overlook Mutual Homes, Inc. v. Spencer, an Ohio federal district court thoroughly weighed whether the FHA imposed a training requirement on an animal in order for it to be approved as a reasonable accommodation.¹⁸ In ruling the FHA imposed no such requirement, the court reasoned,

“Simply stated, there is a difference between not requiring the owner of a movie theater to allow a customer to bring her emotional support dog, which is not a service animal, into the theater to watch a two-hour movie, an ADA-type issue, on one hand, and permitting the provider of housing to refuse to allow a renter to keep such an animal in her apartment in order to provide emotional support to her and to assist her to cope with her depression, an FHA-type issue, on the other hand.”¹⁹

This analysis alone was enough to sway the court, but it further discussed with approval the distinctions drawn by HUD in issuing the above-cited rule to hold that an animal can qualify as a reasonable accommodation under the FHA even if the animal is not individually trained (as required by the ADA for public accommodations) but rather is an emotional support animal.²⁰

Other federal courts have since adopted this reasoning. In North Dakota, the district court denied summary judgment for a housing provider who refused to provide an accommodation to its policy of charging additional fees for an untrained assistance animal.²¹ In doing so, the court held that “the FHA encompasses all types of assistance animals regardless of training” that ameliorate the effects of either physical or mental disabilities.²² Before reaching its decision, the court reviewed the competing positions on this issue and reasoned that it must

¹⁷ See, Overlook Mut. Homes, Inc. v. Spencer, 666 F. Supp. 2d 850, 858-61 (S.D. Ohio 2009); Fair Housing of the Dakotas, Inc. v. Goldmark Prop. Mgmt., Inc., 778 F. Supp. 2d 1028, 1035-36 (D.N.D. 2011); Falin v. Condo. Ass’n of La Mer Estates, Inc., No.: 11-61903-CIV, 2012 U.S. Dist. LEXIS 73453, at *10 (S.D. Fla., May 28, 2012); Sanzaro v. Ardiente Homeowners’ Association, LLC, 21 F. Supp. 3d 1109 (D. Nev. 2014)

¹⁸ See, Overlook Mut. Homes, 666 F. Supp. 2d at 857 (rejecting prior cases that imposed an ADA-like training requirement for an animal to qualify as a reasonable accommodation)

¹⁹ *Id.*, at 859.

²⁰ *Id.*, at 861.

²¹ See, Fair Hous. of the Dakotas, 778 F. Supp. 2d 1028 (D. N.D. 2011).

²² *Id.*, at 1036.

necessarily distinguish accommodations for places of public accommodation from those for housing given the type of access a person with a disability needs to have full and equal enjoyment of each.²³

A federal district court in Florida reached the same conclusion in holding that an untrained “emotional support animal” could be a reasonable accommodation under the FHA.²⁴ Similarly, the federal district court in Nevada likewise held that the FHA imposed no training requirements for assistance animals, and in doing so, refused to apply the ADA definition of service animal when analyzing issues related to accommodations for assistance animals under the FHA.²⁵

The clear trend in FHA case law is to permit reasonable accommodations for (untrained) assistance animals where a nexus exists between the requesting persons’ disability and the function or assistance that the animal provides. If the requester is able to show how the assistance animal ameliorates one or more effects of their disability, such a connection exists and the accommodation should be granted as “necessary to afford such person an equal opportunity to use and enjoy a dwelling”.²⁶ For assistance animals, this means there must be a relationship between the person’s disability and the function or assistance provided by the animal.²⁷ There is, however, no requirement under the VFHL or the FHA that an animal must be trained or “verified” to provide the claimed assistance.

²³ *Id.*, at 1035-36.

²⁴ See, Falin v. Condominium Assoc. of La Mer Estates, Inc., No.: 11-61903-CIV-Cohn/Seltzer, 2012 U.S. Dist. LEXIS 73453 (S.D. Fla., May 28, 2012).

²⁵ See, Sanzaro v. Ardiente Homeowners’ Assoc., LLC, 21 F. Supp. 3d at 1117-19.

²⁶ See, 73 Fed. Reg. 63834, 63835 (Oct. 27, 2008); see also, Commonwealth of Virginia ex rel Fair Housing Board v. Windsor Plaza Condo. Ass’n, Inc., 289 Va. 34, 54, 768 S.E. 2d 79, 88 (2014).

²⁷ See, 73 Fed. Reg. at 63835; see also, Overlook Mut. Homes, 666 F. Supp. 2d at 857

III. ANALYSIS

We agree with HUD, DOJ, and the multiple federal courts that have addressed this issue, that providing an accommodation to allow a person with a disability full access to and enjoyment of their home is necessarily different from providing accommodation to access a public place for an abbreviated period of time. Given the persuasive reasoning expressed by these authorities, we posit that the VFHL likewise distinguishes between ADA/VDA “service animals” and imposes no such training requirement for assistance animals.

Nor should there be. Increasingly, animals are proving useful to lessen the effects of mental and emotional disabilities such as anxiety, autism, post-traumatic stress disorder (“PTSD”), etc. because animals have been shown to have the innate ability to relieve depression and anxiety, reduce stress and stress-related pain, provide companionship, and detect seizures.²⁸ In particular, it is widely recognized that animals, typically dogs, are helpful in treating military service members and veterans diagnosed with PTSD.²⁹ For instance, the *Richmond Times-Dispatch* not long ago profiled a Mechanicsville veteran and Purple Heart recipient who described the assistance he received from an animal to lessen the effects of PTSD and anxiety.³⁰

A. Reliable Verification of Disability

Housing providers seeking clarification about third-party verification should redirect their attention away from animal training or certification, which is unnecessary and legally insufficient. They also should not be daunted by the prospect of potential litigation into accepting dubious verifications limited to vague statements of how an assistance animal would

²⁸ See, 73 Fed. Reg. at 63835.

²⁹ See, U.S. Dep’t of Veteran Affairs, PTSD: National Center for PTSD, “Dogs and PTSD,” http://www.ptsd.va.gov/public/treatment/cope/dogs_and_ptsd.asp (last visited Aug. 23, 2016).

³⁰ See, RICHMOND TIMES-DISPATCH, “Dog Changes Veterans Life,” http://www.richmond.com/article_7921daf7-6d03-583e-aad8-588c455e3cbc.html (last visited Aug. 23, 2016).

benefit the requester, but rather insist on supplemental credible confirmation of underlying disability. As with any other reasonable accommodation request, housing providers are absolutely within their rights to focus first on establishing the legitimacy of the requesting party's disability status as defined by fair housing law. Then, as stated above, the only issue remaining is evaluation of information to determine whether the animal provides assistance that ameliorates the effects of the established disability.

Thus, if a person suffering from PTSD—as diagnosed by their treating physician—receives assistance from an untrained dog in the form of emotional support, lessened anxiety, or exiting a building quickly when experiencing a flashback, the housing provider must make exceptions to any pet limitation policies that may normally apply to the housing in question (with no further requirement that an assistance animal be trained, certified, or verified).³¹ Conversely, where a prospective tenant fails to provide credible documentation of either a qualifying disability, or cannot show a relationship to the claimed assistance from an animal, the housing provider may request additional information from a reliable third party “in a position to know about the individual’s disability.”³²

B. Best Practice Recommendations

Housing providers should only seek “reliable disability-related information” that: (1) establishes that the person is “disabled” as defined by the FHA and VFHL; (2) describes the needed accommodation (e.g., assistance animal); and (3) demonstrates how the requested

³¹ See, 18 VAC 135-50-200(D)(2) incorporating by reference the JOINT STATEMENT OF U.S. DEP'T OF HOUS. AND URBAN DEVEL. AND DEP'T OF JUSTICE, “Reasonable Accommodations under the Fair Housing Act,” May 17, 2004, p. 13 (Response to question 18).

³² *Id.*

accommodation is related to and will help ameliorate the effects of the disability.³³ We caution, however, that housing providers should rarely require access to an individual's medical records or details concerning the nature or severity of the person's disability. Additionally, care should be taken to keep the documentation confidential given its personal and health-related nature.

Moreover, when a housing provider seeks additional information from a person seeking a reasonable accommodation for an assistance animal, it may be advisable to grant a temporary exception to any pet limitation policy pending its submission. Such a temporary exception may serve to avoid claims that the housing provider refused the reasonable accommodation request.

Housing providers should not impose additional deposits or fees as a condition of granting a reasonable accommodation request for an assistance animal. Charging such fees in the absence of significant damage, or based only on unjustified assumptions about an animal, goes against the anti-discrimination nature of the statutes in place to protect persons with a disability. The animal is essentially functioning as an assistive device in such circumstances; so just as a housing provider should not impose a wheelchair deposit for potential carpet damage, it should not demand upfront money for animal damage that may never occur. Of course, persons with a disability are nonetheless responsible for any damages actually caused by an assistance animal, and housing providers retain the right to seek recovery for damages that exceed normal wear and tear (whether caused by an assistance animal or a wheelchair).

Finally, if the person seeking a reasonable accommodation for an assistance animal cannot provide reliable evidence supporting their disability status as defined by FHA or VFHL, or fails to establish the required nexus between the disability and the assistance the animal provides, then the housing provider may deny such request.

³³ See, 18 VAC 135-50-200(D)(2) incorporating by reference the JOINT STATEMENT OF U.S. DEP'T OF HOUS. AND URBAN DEVEL AND DEP'T OF JUSTICE "Reasonable Accommodations Under the Fair Housing Act" at 13-14.

C. Therapeutic Relationships

Housing providers need to evaluate reasonable accommodation requests on an individual, case-by-case basis. As a result, compiling an exhaustive inventory of “acceptable” documentation (or, alternatively, a list of unacceptable authenticators) for verification purposes is inadvisable, if not practically impossible, because a requester must be allowed to submit credible information that may not otherwise appear on a list.

In light of expressed concern from some housing providers about hesitancy to request information to avoid a potential fair housing complaint or charge, we consider the types of sources below to meet the “reliable third party” standard as expressed in the HUD/DOJ Joint Statement. In general, housing providers may ask that the verifier have a therapeutic relationship with the requester, in order to establish their reliability as a “third party who is in a position to know” about the individual’s disability.

For disability verification purposes, we consider “therapeutic relationship” to mean the provision of medical care, program services, or personal care services done in good faith, in the interests of the person with a disability, by: (1) a practitioner of the healing arts regulated by the Virginia Board of Medicine, when acting within his scope of practice and in the context of a bona fide practitioner-patient relationship; (2) an individual or facility under the rights, privileges, and responsibilities conferred by a valid, unrestricted state license, certification, or registration to serve persons with disabilities; (3) a member of a peer support or similar group that does not charge service recipients a fee, or impose any actual or implied financial requirement, and who has actual knowledge about the requester’s disability; or (4) a caregiver with actual knowledge about the requester’s disability.

Housing providers also may request verifiers authenticate all or some of the following information to help evaluate their reliability and knowledge of the requester's disability:

- General location of the provision of care, as well as duration (for example, number of in-person sessions within the preceding 12 months);
- Whether the verifier is accountable to or subject to any regulatory body or professional entity for acts of misconduct;
- Whether the verifier is trained in any field or specialty related to persons with disabilities in general or the particular impairment cited (again, being cautious not to venture into the nature and scope of the requester's disability); and
- Whether the verifier is recognized by consumers, peers, or the public as a credible provider of therapeutic care.

D. Examples of Presumed Reliable Third-Party Verifiers³⁴

- Persons licensed or certified by the Virginia Boards of Audiology and Speech-Language Pathology; Counseling; Dentistry; Medicine; Nursing; Optometry; Pharmacy; Physical Therapy; Psychology; or Social Work, when acting within their scope of practice to treat the requester's claimed disability.
- Any health care provider on active duty in the armed services or public health service of the United States at any public or private health care facility while such practitioner is so commissioned or serving, and in accordance with his official duties and scope of practice to treat the requester's claimed disability.

³⁴ This list is not meant to be exhaustive.

- Persons in compliance with the regulations governing an organization or facility qualified to treat the requester's claimed disability and licensed by the Department of Behavioral Health and Developmental Services; the Department for Aging and Rehabilitative Services; or other similar non-medical service agency.
- Unlicensed counselors or therapists rendering services similar to those falling within the standards of practice for professional counseling, as defined in Va. Code § 54.1-3500, including members of peer support groups, so long as the person with a disability benefiting from such services is not subject to a charge or fee, or any financial requirement, actual or implied.
- A licensed or certified practitioner of the healing arts in good standing with his profession's regulatory body in another state, who has a bona fide practitioner-patient relationship with the requester in compliance with all requirements of applicable Virginia law and regulations.

A note about online disability verifications or other documentation that appear formulaic: In situations involving verification from an out-of-state practitioner not regulated by the Virginia Board of Medicine, the practitioner should be licensed or certified by both the other state's applicable regulatory body as well as the jurisdiction where the person with a disability was located *at the time services were provided* (presumably, in most cases, Virginia).

Housing providers with reason to believe disability verification was obtained via telemedicine in particular (e.g., online verification) may authenticate the information to ensure compliance with Virginia Board of Medicine guidance stating, in part: "Practitioners who treat or prescribe through online service sites must possess appropriate licensure in all jurisdictions

where patients receive care.” Any disability verification obtained via telemedicine should comply with official guidance issued by the Board of Medicine, which specifically excludes “audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire.”

In order to assess the reliability of the verifier when evaluating a reasonable accommodation request, a housing provider—or the Virginia Fair Housing Office (VFHO) in the event of a complaint investigation—may question the basic nature of the interaction among the verifier and the requester. We emphasize the need to focus not on the nature or severity of the condition or diagnosis, but rather the credibility of the information provided in establishing the verifier’s qualifications as being in a position to know about the person’s disability. To determine whether a disability verification that appears questionable to the housing provider—or the VFHO in the event of a complaint investigation—results from a bona fide practitioner-patient relationship, the verifier may be asked for confirmation of compliance with Va. Code § 54.1-2903, governing the practice of healing arts requiring a Virginia license, as well as adherence to Board of Medicine official guidance on telemedicine³⁵ as applicable.

IV. CONCLUSION

Allowing housing providers to challenge disability verifications arbitrarily, or require overly burdensome documentation from individuals making reasonable accommodation requests, would jeopardize the fundamental protections in place for persons with a disability under fair housing laws. The U.S. Supreme Court has held that the FHA is remedial in nature and requires “generous construction” in order to combat pervasive discrimination against persons with a

³⁵ See Department of Health Professions, Virginia Board of Medicine, Guidance Document 85-12 (<http://www.townhall.virginia.gov/L/ViewGDoc.cfm?gdid=5712>)

disability.³⁶ Moreover, amending the VFHA to make state-level rules governing assistance animals more stringent would only create a false sense of security or safe harbor; Virginia housing providers would remain subject to federal complaints or charges by HUD under FHA, just as they are now.

At the same time, ensuring that residential housing providers can request and obtain reliable, credible disability verification in support of accommodation requests for assistance animals preserves the integrity of the process for all parties. Virginia law governing professional licensure of health care practitioners sufficiently addresses the stated concerns of housing providers regarding requests for a therapeutic relationship between the requester and the verifier. The Board of Medicine's guidance on telemedicine in particular appears to prohibit the fraudulent "verification mills"³⁷ cited by some industry advocates.

We cannot warn strongly enough against proposals that would further criminalize disability-related claims; to do so could have a chilling effect on persons with disabilities, perhaps most especially those with intellectual or mental impairments. We also caution against any effort to restrict unilaterally, without exception, those persons or entities qualified to verify disability status. Policymakers must be careful to avoid establishing higher or different standards based on type of disability (e.g. mental health vs. physical impairment) amid parity concerns.

The evaluation of a reasonable accommodation request is "a highly fact specific inquiry."³⁸ Accordingly, housing providers should consider accommodation requests individually for purposes of preserving fair housing rights, as limiting the pool of acceptable

³⁶ See, e.g., City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 731 (1995); Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 212 (1972).

³⁷ See, "Fraudulent Requests for Accommodation of Assistive/Emotional Support Animals," Virginia Apartment Management Association for Affordable Housing, Real Estate Law and Mortgages Workgroup of the Virginia Housing Commission, July 2016 (http://services.dlas.virginia.gov/User_db/frmView.aspx?ViewId=4608&s=16).

³⁸ See, Windsor Plaza, 289 Va. at 55 citing Scoggins v. Lee's Crossing Homeowners Ass'n, 718 F.3d 262, 272 (4th Cir. 2013).

verifiers inherently risks discriminating against a qualified person with a disability in an unusual or unforeseeable circumstance. For example, restricting accommodation verification documentation exclusively to physicians, psychiatrists, or similar healthcare professionals—as Utah appears to do through its fair housing regulations³⁹—risks disenfranchising otherwise eligible persons with a disability who lack the financial or logistical means to access medical care for a period of time.

Given that no statutory deficiency appears evident in relation to the issues raised—and any amendments to the VFHA would be subject to federal scrutiny given Virginia’s current certification as substantially equivalent by HUD—we agree that asking disability verification sources to document a therapeutic relationship with the accommodation requester is a reasonable way for housing providers to evaluate third-party reliability.⁴⁰ Pending submission of additional supporting information, it may still be prudent for housing providers to grant a temporary exception to any pet limitation policy, in the spirit of an informal interactive process.

In fact, HUD advises that it prefers parties to enter into an informal “interactive process” when it is necessary to inquire into a reasonable accommodation request.⁴¹ In this way, discussions remain open and the housing provider may avoid claims of undue delay in providing a response to the accommodation request, which could be considered a denial.

If promoting this type of cooperative communication is an avenue the Housing Commission wishes to explore, an amendment to the VFHL would be necessary because the

³⁹ See, Utah Admin. Code R.608-1-17.A(2)(a) (2011) (<http://www.rules.utah.gov/publicat/code/r608/r608-001.htm>) (last visited Sept. 9, 2016).

⁴⁰ During its 2015-16 session, the Colorado legislature passed legislation imposing a requirement on health care licensees to make written disability verifications in response to reasonable accommodation requests. However, the statute—which becomes effective January 1, 2017—does not limit the type of documentation a requester must provide to support an accommodation request and preserves all FHA rights. The legislation also makes intentional misrepresentation of an assistance animal in housing by a non-disabled person a petty criminal offense punishable by fines, after one warning. See, HB 16-1426 (<https://legiscan.com/CO/text/HB1426/2016>).

⁴¹ See, 18 VAC 135-50-200(D)(2) incorporating by reference the JOINT STATEMENT OF U.S. DEP’T OF HOUS. AND URBAN DEVEL. AND DEP’T OF JUSTICE, AT P. 7-9 (ANSWER TO QUESTION 7).

Virginia Supreme Court held that an “interactive process,” since it is not expressly required by the VFHL, does not change the accrual date of a refusal of a reasonable accommodation.⁴²

Stakeholders concerned about systemic integrity might be assured by legislation to provide that a cause of action for refusal to make a reasonable accommodation, (or reasonable modification) shall not accrue as long as the parties are earnestly engaged in, and promptly participate in, an informal interactive process.

⁴² See, Windsor Plaza, 289 Va. at 59-60.